FIL

In the
Supreme Court of the United States
OCTOBER TERM, 1960

No. 93

THE DAHLBERG COMPANY, A CORPORATION
Respondent

vs.

WESTERN HEARING AID CENTER, LTD., A CORPORATION
Petitioner

THE DAHLBERG COMPANY, A CORPORATION
Respondent

vs.

WESTERN COMPANY, INCORPORATED, AN ORE-
GON CORPORATION
Petitioner

THE DAHLBERG COMPANY, A CORPORATION
Respondent

vs.

WESTERN HEARING CENTER, INC., A CORPORATION
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF THE STATE OF MINNESOTA

JOSEPH ROBBINS
827 Plymouth Building
Minneapolis 3, Minnesota
Attorney for Petitioners

INDEX

	PAGE
Opinion below	2
Jurisdiction	2
Question presented	2
Constitutional provisions involved	2
Statement of case	3
I. Procedural history of case	3
II. Facts material to the question presented	3
III. Federal question raised below in trial court and before Minnesota Supreme Court	6
Argument	7
I. Certiorari should be granted in the instant case because an important question affecting jurisdiction of state courts over non-resident corporations and the right of non-resident corporations under the Fourteenth Amendment is involved. The "single act" theory particularly when applied to a purchase instead of a sale, giving rise to jurisdiction over non-resident corporations, needs to be clearly defined	7
II. Purchase and attendant activity as insufficient minimal contact	11
Conclusion	19

AUTHORITIES CITED

Statutes:

Minnesota Statutes Annotated:	
Section 303.13, Subd. 1 (3)	2, 3, 5, 6, 8, 9, 10
28 U. S. C. A., Section 1257 (3)	2

Constitutions:

Constitution of the State of Minnesota, Art. 6, Sec. 2 . . . 2

Cases:

A. G. Bliss Co. v. United Carr Fastener Co. of Canada (1953), 116 F. Supp. 291 16
Beck v. Spindler, — Minn. —, 99 N. W. 2d 670 . . . . . 10, 16, 19, 20
Emerson Radio and Phonograph Corporation v. Mayflower Sales Company, 124 N. Y. S. 2d 83 (1953) 13, 21
Greenberg v. Lamson Bros. Company, 75 N. Y. S. 2d 233 (1947) 14, 20
International Shoe Company v. State of Washington, 326 U. S. 310 . . . . . 9, 12, 13, 16, 17, 18, 20, 21
McGee v. International Life Insurance Company, 355 U. S. 220, 78 S. Ct. Rep. 199 . . . . . 16, 18
Mueller v. Steel Case, Inc. (1959), D. Minn., 172 F. Supp. 416 11
Rosenberg Bros. & Company, Inc. v. Curtis Brown Company, 260 U. S. 516 . . . . . 12, 14, 21
Shilling v. Roux Distributing Co., Inc., 240 Minn. 71 . . . . . 10, 17

Texts:

12 A. L. R. 2, 1439, Section (3) 12
39 Va. L. Rev. 966 18
42 Minn. L. Rev. 909, 921 19

In the
Supreme Court of the United States
OCTOBER TERM, 1960

No. ——

THE DAHLBERG COMPANY, A CORPORATION
Respondent

vs.

WESTERN HEARING AID CENTER, LTD., A CORPORATION
Petitioner

THE DAHLBERG COMPANY, A CORPORATION
Respondent

vs.

DAHLBERG WESTERN COMPANY, INCORPORATED, AN OREGON CORPORATION
Petitioner

THE DAHLBERG COMPANY, A CORPORATION
Respondent

vs.

OREGON HEARING CENTER, INC., A CORPORATION
Petitioner

PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF THE STATE OF MINNESOTA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Minnesota entered in the above entitled case January 27, 1961.

OPINION BELOW

The opinion of the Minnesota Supreme Court is reported at — Minn. —, 107 N. W. 2d 381.

JURISDICTION

The judgment of the Minnesota Supreme Court was pronounced January 27, 1961. The jurisdiction of this Court is invoked under *28 U. S. C. A.*, Section 1257 (3).

Article 6, Section 2 of the Constitution of the State of Minnesota provides: "The Supreme Court shall consist of one chief judge and not less than six or more than eight associate judges, as the legislature may establish. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, but there shall be no trial by jury in said court." Adopted November 6, 1956.

From the final judgment of the Minnesota Supreme Court after taking such appeal from the District Court of Hennepin County, Minnesota, petitioner has no further remedy under the laws of the State of Minnesota.

QUESTION PRESENTED

Is the constitutional guarantee of due process infringed by the decision of the Minnesota Supreme Court in applying *Minnesota Statutes Annotated* 303.13, Subd. 1 (3) in granting jurisdiction over a non-resident corporation based on minimal contact, consisting solely of purchases from respondent, in the State of Minnesota?

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF CASE

I.

Procedural history of case.

Petitioners were served with process in accordance with *Minnesota Statutes Annotated* 303.13, Subd. 1 (3), by service on the Secretary of State of Minnesota on June 22, 1959.

On October 21, 1959 petitioners served notice of motion and motion to dismiss in the nature of a motion to quash service of process for lack of jurisdiction. The motion of petitioners was denied by order of the District Court dated November 30, 1959.

Petitioners filed notice of appeal to the Minnesota Supreme Court on December 28, 1959. After receiving briefs and hearing oral arguments by counsel, the Minnesota Supreme Court rendered judgment on January 27, 1961, affirming the order of the District Court. Petitioners have no further remedy by appellate review in the State of Minnesota.

II.

Facts material to the question presented.

This case involves the right of a Minnesota corporation to obtain jurisdiction in Minnesota Courts over Oregon corporations under the Fourteenth Amendment to the United States Constitution.

The respondent, the Dahlberg Company, a Minnesota corporation, is engaged in the manufacture and sale of hearing aids, parts and accessories. Respondent is seeking to recover on five promissory notes which two of the petitioners had made and delivered to respondent at its plant in Golden Valley, Minnesota, and upon an open account

had with one petitioner. Each of the notes is payable in Minnesota. Each petitioner is a corporation organized and existing under the laws of Oregon. The case against Western Hearing Center, Ltd. is to recover a note for $6,886.88 delivered to respondent in Golden Valley, Minnesota, on November 7, 1958, payable there in 12 monthly installments of $673.89 on which there is a balance due of $5,738.90. The case against Dahlberg Western Company, Inc., is to recover $3,042.69 as the balance owing on account for hearing aids and accessories purchased by petitioners from respondent in Minnesota. The case against Oregon Hearing Aid Center, Inc. is to recover on a promissory note for $5,678.00 made and delivered to respondent at its plant in Golden Valley, Minnesota, and payable there on demand. The second case against Oregon Hearing Center, Inc. is to recover on a promissory note for $2,947.20 made and delivered to respondent at its plant in Golden Valley, Minnesota, payable there on demand. The case against Oregon Hearing Aid Center, Inc., is to recover on a promissory note for $4,724.00 made and delivered to respondent on July 1, 1958, at its plant in Golden Valley, Minnesota, payable there on demand. The balance remaining unpaid on this note is $2,084.40. The second case against Oregon Hearing Aid Center, Inc. is to recover on a promissory note for $6,724.00 made and delivered by petitioner to respondent on November 20, 1958, at respondent's plant in Golden Valley, Minnesota, payable there on demand. The balance owing on this note is $5,229.60. The total amount involved in all six cases is $24,720.79, all of which is payable by petitioners to respondent in Golden Valley, Minnesota.

Because the same problem is involved in each case, the appeal to the Minnesota Supreme Court was perfected

as to each petitioner and not to each individual action in order to avoid needless repetition, and for the same reason this petition is brought on the same basis.

The summons and complaint in each action was served by leaving a duplicate copy with the Secretary of State of Minnesota as agent for process pursuant to *Minnesota Statutes Annotated* 303.13, Subd. 1 (3).

One Harold S. Jones is an officer and director of the three petitioners and has acted in behalf of all of them.

The petitioners are corporations organized and existing under the laws of the State of Oregon. Each is engaged in the sale and distribution of hearing aids and accessory products in areas outside the State of Minnesota. Petitioner, Dahlberg Western Company, Inc., entered into two contracts in writing with respondent, a distributors agreement and a district distributors basic quota agreement, which contracts were made and executed in the State of Minnesota. Respondent filled the orders of the petitioners at their plant in Golden Valley, Minnesota. Orders were delivered to petitioners f.o.b. the office and plant in Golden Valley, Minnesota. The president of each of the petitioners, namely, Harold S. Jones, did attend sales meetings and conferences at the office of the plaintiff in Golden Valley where business policies, plans and procedures were discussed, considered and decided upon. The promissory notes in question were executed by petitioners at respondent's office in Golden Valley. The notes were delivered to respondent in Golden Valley, Minnesota, and made payable there.

The petitioners have never qualified to do business in Minnesota. Petitioners do not have agents within the State of Minnesota to transact or solicit business. They have no salesmen, either resident or traveling, within the State of

Minnesota, have no warehouse or other storage facilities in Minnesota, and do no advertising in Minnesota. They have no assets or property there, nor do they have a bank account in Minnesota. They do not have any booth or display room in Minnesota, do not make deliveries in Minnesota, do not hold any directors' meetings in Minnesota, have not made any installation of equipment in Minnesota, do not have their names in any building directories, telephone directories or on any office doors or any vehicles in Minnesota, and have no office or other place of business in Minnesota. Petitioners make no sales in Minnesota. Their only activities have been purchases from respondent.

The trial court found that petitioners had sufficient contacts in the State of Minnesota to bring them within the jurisdiction of *Minnesota Statutes Annotated* 303.13, Subd. 1 (3). The Supreme Court of Minnesota arrived at the same conclusion by affirming the order of the District Court denying petitioners' motion to quash service of process.

III.

Federal question raised below in trial court and before Minnesota Supreme Court.

The basis for petitioner's motion in the trial court was the constitutional guarantee of the right of due process and was expressed in the memorandum presented to the trial court in support of petitioner's motion. The federal question was brought to the trial court's attention in the following manner: "Several other states have expanded their jurisdiction over foreign corporations by enacting similar statutes and it is submitted that any state may, by legislation, extend its jurisdiction over foreign corporations to any point it deems appropriate, *PROVIDED* that such

statutes, as applied to any particular case, do not run contrary to the due process clause of the United States Constitution. The United States Supreme Court has, from time to time, determined the requisites for due process relative to jurisdiction over the defendant foreign corporation."

Petitioners also brought the constitutional question before the Supreme Court of the State of Minnesota in defining the legal issues to be heard before that court by the following question: "Would the application of M. S. A. 303.13, Subd. 1 (3) be valid under the United States Constitution if applied to the case at bar."

Both the trial court and the Minnesota Supreme Court found that the application of the Minnesota statute to the facts of this case was not in violation of the United States Constitution which provides for the guarantee of due process of law in the Fourteenth Amendment.

ARGUMENT

I.

Certiorari should be granted in the instant case because an important question affecting jurisdiction of state courts over non-resident corporations and the right of non-resident corporations under the Fourteenth Amendment is involved. The "single act" theory particularly when applied to a purchase instead of a sale, giving rise to jurisdiction over non-resident corporations, needs to be clearly defined.

Plaintiff brings six actions, five on promissory notes and one on an open account. The defendants are three foreign corporations which had substantially similar contacts within the State of Minnesota. Consequently, for the sake of brevity, this argument will pertain to all de-

fendants except where it hereinafter specifically alludes to either one or the other.

Essentially the basic question to be resolved is whether petitioners have had sufficient contacts within Minnesota so as to be amenable to the jurisdiction of the State. The defendants were served under the provisions of *M. S. A.* 303.13, Subd. 1 (3) which reads in part as follows:

> "(3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the Secretary of the State of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort. Such process shall be served in duplicate upon the secretary of state, together with a fee of $6 and the secretary of state shall mail one copy thereof to the corporation at its last known address, and the corporation shall have 20 days within which to answer from the date of such mailing, notwithstanding any other provisions of the law. The making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign corporation that any process against it which is so served upon the secretary of state shall be of the same legal force and effect as if served personally within the State of Minnesota. As amended Laws 1955, c. 820, §30; Laws 1957, c. 538, §1."

If the acts done or contacts made by petitioners within Minnesota fall within the sweeping purview of the statute,

the question remaining concerns the constitutional validity, under the Due Process clause of the Federal Constitution, of *M. S. A.* 303.13, Subd. 1 (3) as it pertains to the particular set of facts in question. It is submitted that the petitioners did not have sufficient contacts with the State of Minnesota to render them amenable to suit there. No attempt is made to strike down the statute in toto. If petitioners prevail, they will do so by virtue of the fact that the statute in question is repugnant to the Federal Constitution if applied in this case.

At the outset, it is agreed that any state may, by legislation, extend its jurisdiction over foreign corporations to any point it deems appropriate, PROVIDED that such statute, as applied to any particular case, does not run contrary to the due process clause of the United States Constitution.

This Court, in *International Shoe Company v. State of Washington*, 326 U. S. 310, decided in 1945, set out the requirements necessary for a foreign corporation to be amenable to suit in the forum state. The criteria established by this decision are the basis for determining due process requirements relative to service of a foreign corporation and all decisions regarding this question now fall under the shadow of the Court's holding in that case. The broad and general principle to which courts were directed was stated as follows:

> "* * * But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

The Court, *supra*, became somewhat more explicit when it stated that the demands of due process

> "* * * may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this case. Hutchinson v. Chase and Gilbert, 45 F. 2d 139, 144."
> *Supra*, 317.

Further, the Court recognized that

> "* * * Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. *Supra*, 319.
>
> "That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties or relations. Pennoyer v. Neff, supra; Minnesota Commercial Association v. Benn, 261 U. S. 140."

It is apparent that an inflexible and arbitrary guide as to what is or is not violative of the Constitution relative to service of process of foreign corporations cannot definitely be established. Each case must be the result of an assessment and evaluation of all relevant circumstances.

M. S. A. 303.13, Subd. 1 (3) does not give Minnesota the almost unlimited jurisdiction it purports to have. This has been judicially determined by both the Minnesota Supreme Court[1] and the United States District Court. In

[1] *Schilling v. Roux Distributing Co., Inc.*, 240 Minn. 71; *Beck v. Spindler*, — Minn —, 99 N. W. 2d 670.

Mueller v. Steel Case, Inc. (1959), D. Minn. 172 F. Supp. 416, involving an action based on tort, the Court, Judge Gunnar H. Nordbye, had the following to say:

> "It may be, as plaintiff urges, that Minnesota has attempted by this statute to thrust aside all prior concepts of that which constitutes the doing of business by a foreign corporation in the State and has endeavored to wipe out all jurisdictional barriers where any part of the commission of a tort in this state damaging a citizen may be attributed to a foreign corporation. But such an attempt baldly offends the Federal Constitution. * * * Obviously, an attempt to lodge a suit in this state under such circumstances and to require the seller to come here to defend, offends the very basic elements of fair play and substantial justice. * * *"

The Court then alluded to the United States Supreme Court's directions:

> "In the final analysis, service of process against foreign corporations under state statutes must be tested by Federal Law, and the landmark case in that regard is the International Shoe Company Case."

II.

Purchase and attendant activity as insufficient minimal contact.

The contacts the petitioners had with the respondent in the cases were essentially that petitioners purchased hearing aids, parts and accessories from the respondent and negotiated distributing agreements and contracts, including notes, attendant this goal. Petitioners' president did attend sales meetings and conferences at the office of the respondent in this regard.

There seems to be no point in discussing every phase of

the wide range of decisions subsequent to the *International Shoe Company* case. This argument will be confined to the case law relating to purchasing activities by a foreign corporation as giving or not giving the forum state proper jurisdiction.

At the outset, it should be noted that purchasing activities, in and of themselves, were not traditionally considered sufficient to give a forum state jurisdiction over a foreign corporation. Any change from this position must then necessarily be an extension of the existing judicial determinations.

It has been frequently held that the purchase of goods within the state by a foreign corporation, even at regular intervals, will not, in and of itself justify the conclusion that the corporation is present within the jurisdiction of the state so as to be subject to process. See *12 A. L. R. 2, 1439*, Section (3). Perhaps the landmark case in this area is this Court's decision in *Rosenberg Bros. & Company, Inc. v. Curtis Brown Company*, 260 U. S. 516. Admittedly, the case was decided long before the *International Shoe* case. However, it is important and pertinent as background and, as will be shown later, the holding in *Rosenberg* has been reconciled with the directions of *International Shoe Company*.

Plaintiff, Rosenberg Company, was a New York corporation. It brought suit against the Curtis Brown Company, an Oklahoma corporation. Service of process was made by delivery of summons on defendant's president while he was in New York temporarily. Defendant appeared specially to quash service on the ground that defendant was not found within the state. The sole issue to be resolved was whether defendant was doing business within the State of New York in such a manner as to warrant an inference that it was present there.

Defendant was a small retail dealer in men's clothing and furnishings in Oklahoma. It never had applied for a license to do business in New York nor did it, at any time, authorize suit to be brought there. It had no property, stockholder, agent or offices in New York. Defendant did, however, purchase from time to time a large part of its merchandise in New York. These purchases were sometimes made through correspondence and at other times by visits of defendant's officers in New York.

The Court granted defendant's motion to quash service, stating:

> "The only business alleged to have been transacted by the company in New York, either then or theretofore, related to such purchases of goods by officers of a foreign corporation. Visits on such business, even if occurring at regular intervals, would not warrant the inferences that the corporation was present within the jurisdiction of the state."
>
> *Supra* at 518.

The doctrine of Rosenberg, holding that purchasing activities are not sufficient to confer jurisdiction, was reconciled with the requirements of the *International Shoe* case in *Emerson Radio and Phonograph Corporation v. Mayflower Sales Company*, 124 N. Y. S. 2d 83 (1953). Defendant was a Missouri corporation engaged in the wholesale distribution of electrical appliances and equipment. It sold its products in Missouri and Kansas only. The only business activity defendant had with the forum state, New York, was the purchase of goods for resale exclusively within other states. There was no showing that defendant made sales in New York or that anyone was employed there.

The plaintiff relied to a great extent on the *International*

Shoe Company case. The defendant cited the *Rosenberg* decision. The Court distinguished the two cases.

> "There (International Shoe Company) the foreign corporation regularly solicited business within the state through a sizable staff of salesmen which it maintained, and who lived in Washington. Consequently, held the Court, it was proper for the State of Washington to impose an assessment for unemployment compensation upon the foreign corporation. Moreover the ruling in Rosenberg, supra, was not overruled by the decision in the International Shoe case."
>
> *Supra* at 84.

The motion to quash service was granted.

In *Greenberg v. Lamson Bros. Company*, 75 N. Y. S. 2d 233 (1947), the defendant, an Ohio corporation, operated a department store. It was not qualified to do business in New York nor did it maintain an agent in New York. It did not have a place of business there nor did it maintain an office in New York. Defendant had no telephone listing, owned no real estate, paid no taxes, held no directors' meeting, and had no bank accounts or books in New York. The Court added "what is especially significant is that it makes no sales whatsoever in this state and has no salesmen or other representative to solicit orders * * *." *Supra* at 234.

Defendant bought several million dollars worth of goods a year and sent in large staffs of buyers to New York from time to time. It also employed in New York a resident company devoted to collecting information relating to wholesale marketing conditions. This resident company also represented some forty-five other department stores and was, in all practicality, a resident buyer for these stores.

Defendant had numerous activities and contacts in New York which, plaintiff urged, constituted doing business there. Defendant officers came to New York to participate in meetings with buyers to determine buying policies. Defendant buyers and officers, incidental to the buying of merchandise and interviewing of salesmen, had occasional stenographic service and the use of the resident buyer's telephone. Occasional claims in connection with merchandise purchased were adjusted in New York. The resident buyer listed defendant's name, along with the other department stores it represented, on its directory board. The defendant had a mailbox in the building. Further, there were also some purchases shipped to defendant via the resident buyer who reassembled the purchases and forwarded them to defendant to save freight costs. Defendant also had a contract with an employment agency in New York to refer prospective employees to the defendant in New York City. Applicants were interviewed in New York for work in Ohio. The Court disposed of plaintiff's contentions by holding that the incidents, listed above, were nothing more than normal incidents of buying. Defendant's motion to quash service was granted.

> "In the final analysis, it would indeed be far-fetched to hold that a department store retailing merchandise exclusively within the State of Ohio was 'doing business' within the State of New York, when it sold not a single dollar's worth of merchandise in this state, when it solicited no orders in this state for the sale of its merchandise, when practically all that it did here was to buy its merchandise and in connection with such purchases utilized the facilities of a 'resident buyer.'"
>
> *Supra* at 236.

This case was decided in 1947, two years after the *International Shoe Company* case.

One of the most recent cases concerned with the problem of purchasing by a foreign corporation as establishing sufficient contacts so as to be amenable to suit in a forum state is *A. G. Bliss Co. v. United Catr Fastener Co. of Canada* (1953), 116 F. Supp. 291. The defendant, a Canada corporation, and a wholly owned subsidiary of a Massachusetts corporation, moved to quash service. The Court held that the fact that defendant was a wholly owned subsidiary was not enough to confer jurisdiction, neither were the facts that defendant's officers were Massachusetts residents and that defendant made a single isolated sale in the State of Massachusetts. As to purchases, the Court held :"Purchases made in Massachusetts do not in themselves make defendant subject to service in Massachusetts. Rosenberg Bros. and Company, Inc. v. Curtis Brown Co., 260 U. S. 516."

The Court concluded that the sum total of the above activities were insufficient to confer jurisdiction.

This decision also was determined subsequent to the *International Shoe* case.

The trial court, in denying petitioners' motion to dismiss, cited *McGee v. International Life Insurance Company*, 355 U. S. 220, 78 S. Ct. Rep. 199; *International Shoe Co. v. Washington*, 326 U. S. 310; and *Beck v. Spindler*, — Minn. —, 99 N.W. 2d 670.

These cases can be distinguished on the facts.

In the *International Shoe* case defendant, during the years in question, employed from 11 to 13 salesmen who resided in Washington. Their principal activities were confined to that State and they received commissions as compensation for goods sold in Washington. They solicited

orders from prospective buyers at terms and prices fixed by defendant.

The State of Washington, the U. S. Supreme Court concurring, held that SOLICITATION in the forum state coupled with additional activities were sufficient to confer jurisdiction over defendant. The additional activities were as follows:

1. Defendant's salesmen displayed samples of products, sometimes in a permanent display room.

2. Salesmen resided within the State of Washington for a period of years.

3. A substantial volume of merchandise was regularly shipped by appellant to purchasers within the state.

The case at bar may be distinguished, inasmuch as here we have no solicitation whatsoever, no salesmen residing in Minnesota, no permanent display rooms and no volume of merchandise being regularly shipped to purchasers in Minnesota.

The Minnesota Supreme Court, in *Schilling v. Roux Distributing Co., Inc.*, 249 Minn. 71, counters the argument in that case that the facts were distinguishable from those in the *International Shoe Co.* case, and by so doing indicates that it was concerned with the solicitation and sale of goods as doing business.

> "Systematic solicitation of orders is carried on for only one purpose, namely, the sale of goods. Similarly, the type of activities involved here has the same goal. The sale of goods and the continuous and systematic shipment of such goods into this state is; and ought to be recognized as, the doing of business in this state. Similarly, activities such as we have here is, and ought to be recognized as, the doing of business. We believe that the proper application of the

rule laid down in the International Shoe Co. case will lead to that result, even though the solicitation of orders in this case constituted a minor role in the activities of the defendant's employees. It is obvious that they were here for only one purpose; namely, to encourage the use of defendant's products and stimulate the sale thereof. Their activities resulted in the shipment of a substantial volume of goods into this state. That should be sufficient to constitute the doing of business * * * ."

Supra at 86.

The courts have always been concerned with the sale of products within the forum state. Purchasing, however, from a forum state presents a completely different matter. At any rate, the *International Shoe Co.* case is distinguishable from the case at bar on the facts involved.

In *McGee v. International Life Insurance Company, supra,* the defendant had issued reinsurance to a California resident who was the policy holder. The application for reinsurance was sent from Texas to California. The insured filled it out and mailed it back to the Texas Company. The certificate of reinsurance was then mailed from Texas to the policy holder in California. In addition, the California policy holder had regularly mailed payments to the defendant in Texas. Plaintiff brought action in California and thereafter sued on the California judgment in Texas. The Texas Court denied liability and on appeal, this Court held that the defendant had established sufficient contact in California to render it amenable to suit. This case is not only distinguishable from the facts, but can further be distinguished by the type of activity involved. It involves an activity which can be classified as exceptional. In such cases, the state has a particular interest in the protection of its citizens (see *39 Va. L. Rev.* 966;

42 *Minn. L. Rev.* 909, 921). This Court alluded to this interest when it said "it cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims * * *" (355 U. S. 223, at 226).

Beck v. Spindler, supra, decided by the Minnesota Supreme Court in November, 1959, can also be distinguished. The defendant, a manufacturer located in Indiana sold house trailers to Minnesota residents through a dealer located at Duluth, Minnesota. In addition, the defendant entered into an express warranty with the purchaser, reimbursed the dealer for advertisements of its products, sent in its own employees to Minnesota to remedy defects in the house trailer sold, and joined with the dealer in filing documents required by law to enable the dealer to obtain a license. Clearly, the contacts in *Beck v. Spindler* were of a different kind and nature from the case at bar.

Although it is submitted that the contacts of each of the petitioners with the State of Minnesota relative to each action brought by plaintiff are insufficient to render the petitioners amenable to suit here, it may be well to point out, at this juncture, that the action brought upon an open account against defendant, Dahlberg Western Company, differs from the other actions, inasmuch as no note was executed by defendant payable to plaintiff. Clearly the contacts of petitioner, as they pertain to that action, are insufficient to confer jurisdiction in Minnesota.

CONCLUSION

As previously stated, this argument is generally confined to the question of whether or not purchasing activities by a foreign corporation in a forum state are considered sufficient contacts to render the foreign corporation amenable to suit in the forum state.

The "minimum contact" requirement of the *International Shoe Co.* case is easily stated but difficult to apply to any given set of facts. The petitioners are not quarreling with the theory that a "single" act within the forum state may be sufficient to confer jurisdiction or that systematic and continuous activities need not be shown. They agree that "whether the minimal contacts required exist in a particular case should depend on the quality and nature of the transaction rather than on the quantity of business done by the foreign corporation * * *." *Beck v. Spindler*, *supra* at 677.

The activities in the instant case are purchasing Minnesota products. The contacts with this State are attendant to and pertinent to this goal. Consequently, it is strongly urged that serious consideration be given analogous case law relative to purchasing activities. However, the language of the courts belie that theory. Consider the language of the New York Court in *Greenburg v. Lamson Bros. Company*, *supra* at 236:

> "In the final analysis, it would indeed be far-fetched to hold that a department store retailing merchandise exclusively within the State of Ohio was 'doing business' within the State of New York, when it sold not a single dollar's worth of merchandise in this state, when it solicited no orders in this state for the sale of its merchandise, when practically all that it did here was to buy its merchandise and in connection with such purchases utilized the facilities of a 'resident buyer.'"

And at 234,

> "what is especially significant is that it makes no sales whatsoever in this state and has no salesmen or other representatives to solicit orders * * *."

A consideration of a few of the cases that have been concerned with the question of purchasing activities as being sufficient to grant the forum state jurisdiction clearly indicates that such activities generally are not sufficient. Cases decided subsequent to the *International Shoe Company* have considered the directions in the *International Shoe* case. They have also been swayed by Justice Brandeis' opinion in the *Rosenberg* decision. At least one court (*Emerson Radio and Phonograph Corporation v. Mayflower Sales Company, supra*) specifically points out the fact that the *International Shoe* case did not overrule the *Rosenberg* case. Consequently, in view of existing judicial interpretations relating to purchasing activities and being mindful of the directions in *International Shoe* case, it is submitted that petitioners' activities in Minnesota in the instant case are clearly insufficient to confer jurisdiction to Minnesota. To require petitioners to defend here, to allow service of process on petitioners to stand, would be offensive to the "traditional concept of fair play and substantial justice," and a violation of petitioners' guarantee of Due Process under the Fourteenth Amendment to the Federal Constitution.

Respectfully submitted,

JOSEPH ROBBIE
827 Plymouth Building
Minneapolis 3, Minnesota
Attorney for Petitioners